

**FINAL REPORT
OF THE
INTERIM STUDY COMMITTEE ON
FAMILY LAW ISSUES**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
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PREFACE

The following report of the Interim Study Committee on Family Law Issues was drafted after the Committee's final meeting which was held on October 14, 1998. Therefore, the report was not available for adoption as an official final report at the October 14 meeting. However, the report has been distributed to Committee members for review and their comments have been incorporated.

I. LEGISLATIVE COUNCIL DIRECTIVE

The Legislative Council directed the Committee to study the following:

- ◆ Various child care issues.
- ◆ Therapeutic and special needs foster care as described in Senate Bill (SB) 328-98.
- ◆ The child care regulation issues which had previously been the responsibility of the Board for the Coordination of Child Care Regulation.

II. INTRODUCTION AND REASONS FOR STUDY

Current Indiana law does not regulate therapeutic and special needs foster care. During the 1998 legislative session, SB 328-98 addressed the statewide regulation of therapeutic and special needs foster care practices. However, the general consensus was that more time was needed to examine these issues before the regulations were implemented.

The Committee was also established as a result of the expiration of the Board for the Coordination of Child Care Regulation on November 1, 1997. The Board was responsible for studying a wide range of laws governing the regulation of child care and making recommendations to the General Assembly. The establishment of this Committee fills the void created by the expiration of the Board.

III. SUMMARY OF WORK PROGRAM

The Committee met four times. The Committee heard testimony from 23 witnesses.

The first meeting held on July 8, 1998 focused primarily on therapeutic and special needs foster care and premarital education. The Committee discussed the following: (1) The Committee's charge. (2) Therapeutic and special needs foster care policies, practices, definitions, and reimbursement rates. (3) Training and support services for persons providing kinship care. (4) The need to reauthorize the Board for the Coordination of Child Care Regulation. (5) The value, if any, of examining premarital education and developing legislation in the area.

At the second meeting of the Committee held on August 12, 1998, the Committee addressed the following: (1) Ideas for premarital education legislation and a debate about the value of premarital education. (2) A discussion of Preliminary Draft (PD) 3101, which was drafted based on SB 328-98 with three additional changes and would regulate therapeutic and special needs foster care. (3) Therapeutic foster care experiences and perspectives related by various foster care providers.

The third meeting of the Committee was held on September 9, 1998. The Committee heard testimony on premarital education and covenant marriage. Several marriage and family therapists and other related professionals discussed research and findings relating to premarital education. The family therapists also related anecdotal information about their experiences with premarital education in their practices. Various members of the public debated the merits of premarital education. On the issue of covenant marriage, a state representative from Louisiana discussed Louisiana's experiences in recently enacting a covenant marriage law. A marriage and family therapist and several members of the public discussed the merits of covenant marriage.

The fourth meeting of the Committee was held on October 14, 1998 for the purpose of discussing and voting on Committee legislation.

IV. SUMMARY OF TESTIMONY

The Committee heard testimony from the Division of Family and Children, child placing agencies that provide foster care services, family law attorneys, marriage and family therapists, a state representative from Louisiana, and interested members of the public. The following is a summary of that testimony.¹

A. Foster Care and Child Care Issues.

(1) Therapeutic and Special Needs Foster Care.

- ☐ Indiana law currently contains no definition of therapeutic foster care or special needs foster care.
- ☐ There are presently an estimated 500-800 children in special needs foster care and 1,550 children in therapeutic foster care in Indiana.
- ☐ Therapeutic foster care is in many cases an alternative to residential or institutional care.
- ☐ Therapeutic foster care is generally less expensive than residential and institutional care, with an average daily cost of \$30 to \$80 as opposed to \$80 to \$400.
- ☐ Regulation of therapeutic and special needs foster care would establish a legal standard for these types of foster care and would demonstrate the state's support for therapeutic and special needs foster parents providing specialized care.
- ☐ The standards that are being discussed regarding therapeutic and special needs foster care regulation are standards that many agencies already have. Legislation in this area would ensure that these high standards would apply to all agencies statewide.

(2) Other Foster Care Issues and Child Care Issues.

¹ The minutes of the Committee's proceedings are available on the Internet at www.state.in.us/legislative/interim/committees/. The Committee's minutes are also on file with the Legislative Information Center, 230 State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

Disproportionate Number of African-American Children in Foster Care

- ❑ Children of African-American descent currently represent 37% of all children in out-of-home care.
- ❑ The Division of Family and Children does not believe that courts order the out-of-home placement of African-American children more than children of other ethnic backgrounds, but that African-American children might be remaining in foster care longer because of difficulties in providing services to their families.
- ❑ The Division of Family and Children recommends that this issue be addressed by studying the following: preventative services regarding child abuse and neglect in African-American communities; services to preserve families in African American communities; participation of African-American service providers; recruitment of African American foster parents; and training programs for child welfare staff and practitioners regarding cultural concerns of African-American communities.

Kinship Care

- ❑ The percentage of children currently in out-of-home placements who are residing with relatives is 25%, up from 17%, and is likely to increase due to the passage of the Adoption and Safe Families Act (P.L. 35-1998).
- ❑ The Division of Family and Children recommends a formal study of kinship care in Indiana to address the following issues: the child's safety; supports needed for kinship care families; options to long-term child welfare system dependence; adoption versus guardianship by relatives; cultural and ethnic issues; and training of kinship care families.

Reauthorization of the Board for the Coordination of Child Care Regulation

- ❑ The Board, which has been studying various child care issues since 1984, has developed significant expertise in the area of child care.
- ❑ The Board needs to complete its work of updating the foster home rules, which have not been updated since the 1940s, updating child care center rules, and studying foster home rules as they apply to kinship care.

B. Premarital Education.

Background Information

Relatively few controlled studies of premarital education programs and participants seem to have been conducted. The studies on premarital education generally examine immediate results or results one year post-program. The Committee was presented with no longitudinal studies lasting even five years. Some of the premarital education research projects date back to the 1970s. One study confirms that participation in premarital education has a positive effect on a couple's ability to confront marital conflict, resolve conflict constructively, and seek appropriate help. Subjects in premarital education research projects appear to be better educated and more interested in self-improvement than the population in general.

Research on premarital education indicates the following:

- ✓ Marriage preparation is rated most helpful when it deals with communication,

commitment, conflict resolution, children, and church.

✓ Marriage preparation is most valuable when it is prepared by a team - too few sessions limit its value.

✓ Factors that improve the effectiveness of premarital education include raising awareness of patterns that harm relationships, fostering change in attitudes and beliefs, and teaching positive skills for countering negative patterns.

✓ A long range approach to premarital education is necessary. In a society where people are increasingly mobile, and therefore disconnected from families and other long-term supports, this fact becomes crucial.

Potential Benefits of Premarital Education

Premarital education is a way to educate couples about various marital skills before a breakdown in the marriage occurs. Premarital education is not a cure-all but would enable Indiana to make a statement supporting a couple's effort to solve their problems. If Indiana becomes one of the few states with a premarital education law, it would be helpful to allocate money for research on premarital education.

The breakdown of marriage has numerous consequences to society including poverty, illiteracy, crime, promiscuity, child abuse, domestic violence, and sexual diseases. Given the rise of a divorce culture as well as our increasing life expectancy, the decision to remain faithful in marriage becomes more difficult and requires help from the community and public officials. Current social values surrounding the institution of marriage that increase the probability of marriage dissolution include the following: (1) The devaluing of chastity (promiscuity before marriage or outside of marriage). (2) Attack on authority and traditional institutions. (3) Rethinking of traditional family roles. (4) Overemphasis on what is good for "me" rather than what is good for the family, children or society. (5) Shift of values from a marriage culture in which marriage is forever and divorce is a last resort to a divorce culture in which marriage is an option and divorce can be a gateway to a more fulfilling life.

Some individuals grow up in a home without good role models but want to create something better. Premarital education could assist in helping those couples obtain tools to create a better home life. Premarital education is important because studies show that the amount of love a couple has for one another is not as indicative of who will remain married as a couple's ability to communicate effectively and resolve conflict.

It is important to educate couples on how to alleviate marital strife. There is an association between marital strife and domestic violence and child abuse. Divorce can be a contributing factor and consequence of child abuse. The first year after a child's parents separate, the parents are less affectionate toward the child and supervise the child less. However, children in highly conflicted families do not fare any better. Child abuse at an early age can increase the chance of divorce.

Marriage preparation must be encouraged at all levels. Public policies must place a high priority on programs designed to help married couples face the moral, social, and economic forces that threaten the future of their relationships and their ability to provide for their dependents. Premarital education also facilitates the finding of available resources.

Criticisms of Mandating Premarital Education

Premarital education may make a positive impact on people but it may be difficult initially to determine its effectiveness. Witnesses testifying before the Committee did not identify any studies of the actual effect of premarital education on the likelihood of divorce.

Premarital education does not provide much time to make an impact on well established habits. Qualities that help individuals have a successful marriage should be taught throughout an individual's lifetime. The lives of heroes should be studied at a very young age and in middle school children should be taught self-sacrifice and to strive for a greater good than themselves. It was also suggested that college students should be taught about the special relationships between men and women.

Premarital education would only work if both people are willing participants. It was argued that government interferes in our lives too much. It was also argued that premarital education should not be required by the state since the benefits of the education are so speculative. Lastly, it was noted that requiring the clerks of court to maintain data on premarital education would create a fiscal impact to the county.

C. Covenant Marriage.

Background Information

Louisiana and Arizona recently passed covenant marriage laws and 17 other states introduced covenant marriage bills during the past legislative session. It was suggested that Oklahoma, Virginia, Tennessee, Georgia, Alabama, Washington, and California appear to have a good chance of passing covenant marriage laws during the next session.

Six out of 10 marriages today will end in divorce. Covenant marriage is an effort to strengthen marriage. It allows couples to choose between covenant marriage and standard marriage. Couples who choose covenant marriage are required to undergo premarital counseling. The faith community and the professional counseling community would provide the counseling.

If a couple chooses to enter into a covenant marriage, they agree to seek counseling if they have marital difficulties. Eighty percent of divorces are initiated unilaterally. Under covenant marriage, only the aggrieved party may seek the divorce. There is a no fault provision in Louisiana's covenant marriage law in which a couple is allowed to obtain a divorce if they live apart for two years. There is an opt in provision to Louisiana's covenant marriage law so that a couple who is already married can enter into covenant marriage.

Louisiana enacted its covenant marriage law one year ago. It was an effort to bring back the view that marriage and the family are significant and valuable to society. Initially many predicted that it would be lower income individuals with lesser education who would choose covenant marriage. However, just the opposite is proving to be true. In addition, the University of Virginia and Brigham Young University are conducting five year studies into the effect of covenant marriage.

The Covenant Marriage Debate

There is a market for covenant marriage. Couples who choose covenant marriage have

been found to be from high risk families, such as from divorced parents, and know the pain of divorce. Studies show that divorce is a problem and that the impact of divorce spans three decades and is actually stronger when the person is older.

In the early 70s when no fault divorce passed, divorce increased. Additionally, there was an 800% increase in couples who cohabited. Men, women, and children are the safest in an intact family. Attempts to repeal the no fault divorce law may not be the best approach. It is more important to encourage couples to make the right marital decisions. Covenant marriage is not a silver bullet but rather is an attempt to move in the right direction. Furthermore, covenant marriage does not cost the government anything, and therefore it is worth it even if it turns out to be only marginally successful.

Children are impacted by the divorce culture. Children question whether their parents will get divorced. Forty percent of children in America will go to bed without a father in their home. Covenant marriage is an effort to build a stable future for our children.

Many couples mistakenly believe that a divorce will end their marital strife; however, co-parenting after a divorce is also a struggle. Many individuals who are divorced are surprised to find out how much work it is to make a second marriage work and that if they had put similar effort into their first marriage it could have been salvaged. Covenant marriage builds in some support safety nets.

It was argued that there should be more accountability in marriages and that marriages should be more difficult to end. It was also argued that requiring counseling as a part of covenant marriage could help some individuals rethink their commitments to their marriages.

On the other hand it was argued that a covenant marriage law would constitute excessive governmental intrusion and that it would be inappropriate for Indiana to intrude into marriage by creating different levels of marriage contracts. It was also questioned whether covenant marriage would actually lower the divorce rate.

D. Other Family Law Issues.

The Committee discussed the following issues: (1) The potential benefits and costs of premarital blood testing. (2) The value of extending the waiting period before dissolutions of marriage may be finalized. (3) A discussion about the adversarial system being a difficult system for resolving family law problems and the potential for family mediation in resolving domestic conflicts.

Please refer to the Committee minutes and exhibits for more detailed information relating to the Committee's discussion of these issues.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee made the following findings and recommendations:

Finding #1: A standard approach is needed throughout Indiana for classifying special needs and therapeutic foster children. It is important that the number of therapeutic and special needs foster children placed in a single home does not exceed a number that would be considered safe. The

Board for the Coordination of Child Care Regulation, which expired on November 1, 1997, should be reestablished for a two year period. The two year period would give the Board the opportunity to examine various child care issues and approve any changes to the Division of Family and Children's foster care rules which have not been amended since 1946.

Recommendation #1: Preliminary Draft (PD) 3199. Provides that a therapeutic foster family home is a foster family home: (1) that provides care to a seriously emotionally disturbed or developmentally disabled child; (2) in which a child receives treatment in a family home that is supervised by certain qualified program staff; and (3) that meets all of the requirements for licensing of a foster family home and certain supplementary requirements, including additional training for therapeutic foster parents. Prohibits a therapeutic foster parent from providing care to more than two foster children, not including children for whom the therapeutic foster parent is a parent, stepparent, guardian, custodian, or other relative. Allows the Division of Family and Children to permit a therapeutic foster family home to provide care for more than two foster children whenever the placement of siblings in the same therapeutic foster family home is desirable or in the best interests of the foster children residing in the home. Provides that a special needs foster family home is a foster family home that provides care for a child who has a mental, physical, or emotional handicap and who will require additional supervision or assistance in behavior management, activities of daily living, or management of medical problems. Prohibits a special needs foster parent from providing care to more than eight children (including the foster family's children), and requires that not more than four of the children may be less than six years of age. Provides that the Division of Family and Children may grant an exception to the maximum number of children who may be cared for in a special needs foster home whenever the Division of Family and Children determines that the placement of siblings in the same special needs foster home is desirable. Requires the Division of Family and Children to consider the specific needs of each special needs foster child whenever the Division of Family and Children determines the appropriate number of children to place in the special needs foster home. Reestablishes the Board for the Coordination of Child Care Regulation, which expired November 1, 1997, for a period beginning July 1, 1999, and ending July 1, 2001. Requires the Board for the Coordination of Child Care Regulation to study laws governing the regulation of child care and to make recommendations to the General Assembly concerning changes in the law which the Board for the Coordination of Child Care Regulation finds appropriate.

Vote on Recommendation #1, PD 3199, Do Pass, 8(yea) - 0(ne).

Finding #2: Extending the waiting period before a couple may divorce may give the couple more time to rethink their commitment to their marriage. By extending the period the state wishes to send an important message discouraging divorce.

Recommendation #2: Preliminary Draft (PD) 3464. Extends the minimum waiting period from 60 days to 120 days before a dissolution of marriage may be finalized. Retains 60 days as the minimum waiting period upon a showing of domestic violence against a party or the party's minor child.

Vote on Recommendation #2, PD 3464, Do Pass, 9(yea) - 0(ne).

Finding #3: Marriage is a serious lifetime commitment. It should not be easy to end a marriage. Couples should be given the option to enter into a covenant marriage in which they agree to seek marital counseling during difficult times and may only seek a divorce based on certain limited

and serious grounds.

Recommendation #3: Preliminary Draft (PD) 3353. Defines covenant marriage. Provides that couples can designate a covenant marriage when applying for a marriage license or after marriage. Requires a marriage license to indicate if the marriage is a covenant marriage. Establishes the procedure for declaring a covenant marriage. Requires the State Department of Health to maintain records of covenant marriage declarations. Provides limited grounds for legal separation or dissolution of a covenant marriage. Requires the State Department of Health to develop an informational pamphlet regarding covenant marriage.

Vote on Recommendation #3, PD 3353, Do Pass as Amended, 7(yea)- 2(nea).

Finding #4. Premarital education is a way to educate couples about various marital skills before a breakdown in the marriage occurs.

The Committee discussed and voted on Preliminary Draft (PD) 3411 which would have established a waiting period of 60 days after a person applies for a marriage license before the person is allowed to marry but would have reduced the waiting period to three days if the person participates in a premarital education course. The vote on PD 3411 was 6(yea) and 3(nea). However, at least seven affirmative votes, a majority of the appointed membership, is needed for the Committee to recommend a bill to the General Assembly.

Finding #5: Mandatory premarital blood testing would help protect the health, safety, and well-being of couples seeking to marry.

Recommendation #5: Preliminary Draft (PD) 3457. Requires an individual who intends to marry to have blood tests for certain sexually transmitted dangerous communicable diseases including human immunodeficiency virus (HIV) infection. Provides that the test results are confidential. (Current law provides for optional HIV testing before obtaining a marriage license.)

Vote on Recommendation #5, PD 3457, Do Pass, 7(yea) - 2(nea).

Finding #6: The adversarial system often is not an appropriate or effective forum for addressing contested domestic matters. It is important to explore legislation in the area of family mediation in an effort to mitigate the vengeance of some couples who divorce.

After some consideration, the Committee tabled Preliminary Draft (PD) 3484 which would have required mediation in all contested dissolution of marriage cases. The consensus of the Committee members was that PD 3484 has potential but needs more work. The Committee also expressed an interest in reviewing a fiscal note on PD 3484 before making a decision.

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